

**FOR THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA**

ST. PAUL FIRE AND MARINE
INSURANCE COMPANY,

Plaintiff,

v.

MEHLBURGER BRAWLEY, INC., et al.

Defendants.

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Case No.: 6:09-cv-00369-JHP

ORDER

Before the Court is the Motion for Summary Judgment of St. Paul Fire and Marine Insurance Company [D.E. 76], in which Plaintiff moves the Court to enter judgment in Plaintiff's favor as a matter of law as to all Defendants on Plaintiff's prayer for declaratory relief, and in which Plaintiff moves the Court to enter judgment as a matter of law in Plaintiff's favor as to Defendant Mehlburger Brawley, Inc.'s Counterclaim.

The Court first observes that, despite being validly served with process, Defendant Mill Creek Public Works Authority has failed to respond to the Amended Complaint. Accordingly, Default Judgment is hereby entered against Defendant Mill Creek Public Works Authority.

Second, the Court, having considered Plaintiff's Motion for Summary Judgment [D.E. 76] and the supporting brief [D.E. 77], and also having considered the Affidavit of Robert A. Chaney [D.E. 78], the Affidavit of John G. Rapp [D.E. 79], Mehlburger Brawley, Inc.'s Response and Brief in Opposition to Plaintiff's Motion for Summary Judgment [D.E. 83], and the Reply Brief in Support of St. Paul's Motion for Summary Judgment, hereby GRANTS said motion.

Accordingly, summary judgment is hereby granted to St. Paul Fire and Marine Insurance Company on its Amended Complaint for Declaratory Judgment [D.E. 20], and on the Counterclaim of Mehlburger Brawley, Inc. [D.E. 60], and declares that St. Paul has no duty to defend or indemnify Mehlburger Brawley, Inc., or NRS Consulting Engineers, in connection with the claims of the plaintiffs in *John D. Sikes, et al., Plaintiffs vs. BE, Inc., et al., Defendants*, Case No. CJ-08-00192 in the District Court, Johnston County, Oklahoma.

This ruling disposes of all claims by all parties. Accordingly, this case is dismissed.

IT IS SO ORDERED this 19th day of August, 2010.


James H. Payne
United States District Judge
Eastern District of Oklahoma